

Regular Meeting
Commission on Local Government
10:00 a.m., July 13, 2009
The Virginia Housing Center at Innsbrook
Henrico Room 2
4224 Cox Road
Glen Allen, Virginia

Members Present

Vola T. Lawson, Chairman
Elmer C. Hodge, Jr., Vice Chairman
Harold H. Bannister, Jr.
Frances M. Parsons
Kathleen K. Seefeldt

Members Absent

Staff Present

Susan Williams, Local Government Policy Manager
Steve Ziony, Principal Economist
Matthew Bolster, Senior Policy Analyst

Call to Order

Commission Chairman Vola T. Lawson called the meeting to order at 10:14 a.m. on July 13, 2009 in Henrico Room 2 at the Virginia Housing Center in Glen Allen, Virginia.

I. Administration

A. Approval of Minutes of Regular Meeting of May 11, 2009

Mr. Bannister made a motion that the minutes of the Commission's regular meeting of May 11, 2009 be approved, such motion was seconded by Mrs. Parsons, and the Commission unanimously approved the minutes without amendment.

B. Public Comment Period

The Chairman opened the floor to receive comments from the public. No person appeared to testify before the Commission during the public comment period.

C. Presentation of Financial Statement for June 2009

Referencing an internally produced financial statement that encompassed expenditures through the end of June 2009, Ms. Williams explained that, at the end of the fiscal year, the Department of Housing and Community Development (DHCD) transferred items paid under the Commission's cost code to another agency cost code, which transfers totaled approximately \$9,500. Ms. Williams explained that, in effect, per diem payments, media services and computer operating services for FY09 were charged to an agency cost code other than that designated for the Commission on Local Government. The members accepted the report for filing.

D. Local Government Policy Manager's Report

1. Agency Move

Ms. Williams announced that the agency moved to Main Street Centre (600 East Main Street, Suite 300) on July 9 and 10. She explained that space will be available in the building for Commission meetings. Mr. Hodge asked Ms. Williams about the availability of parking at the new location, and she described the parking options. A brief discussion ensued at the conclusion of which Ms. Williams indicated that she would endeavor to reserve space at the Virginia Housing Center to accommodate the September 14 regular Commission meeting.

Ms. Williams indicated that the Department of General Services (DGS) is requiring all members of Boards and Commissions that hold meetings in the Main Street Centre to obtain DGS-issued photo identification cards. Ms. Williams also indicated that members would soon be receiving business cards and letterhead with the new address.

2. State Budget

Ms. Williams informed the members that all state agencies must submit Budget Reduction Plans for FY 2010 and the 2010-2012 Biennium to the Department of Planning and Budget by July 22. The plans must address reductions of 5, 10 and 15 percent.

3. Staff Activities

Ms. Williams stated that staff continued to participate in meetings of the Joint Subcommittee Studying Development and Land Use Tools and its Workgroups. In addition, Ms. Williams drafted a Memorandum of Understanding between DHCD and the Fort Monroe Federal Area Development Authority (FMFADA). She further indicated that staff spent significant time packing their offices, files and the Commission library in preparation for the move, which effectively closed the agency for three business days.

Finally, Ms. Williams reported that, with respect to DHCD's performance measure on Intergovernmental Relations, for the quarter beginning April 1, 2009 and ending June 30, 2009, Commission staff responded to 46 requests for technical assistance and information.

4. Potential Interlocal Issues

Ms. Williams provided a brief update concerning potential interlocal issues in Alleghany County – City of Covington; Bedford County – City of Bedford; and Culpeper County – Town of Culpeper. She also called attention to newspaper articles that were distributed concerning boundary adjustments and/or potential actions in the Town of Cedar Bluff – Town of Richlands – Tazewell County; Town of Troutville – Botetourt County; Town of Gretna – Pittsylvania County.

Next, Mrs. Lawson indicated that Fairfax County is exploring the possibility of attaining city status. Ms. Williams then distributed an article on the subject, which recently appeared in the *Washington Post*.

5. Other Items of Interest

Ms. Williams informed the members of Advisory Opinion AO-04-09, issued by the Virginia Freedom of Information Advisory Council on May 15, 2009. Ms. Williams said that the Opinion holds that Subsection D of § 15.2-2907 provides that certain meetings that are or would be subject to review by the Commission on Local Government are not subject to the Freedom of Information Act (FOIA).

Ms. Williams then noted that the Commission's mandates assessment process was highlighted in the May 15 issues of VACO's County Connections and VML's Update. She also indicated that the Commission's fiscal stress report was highlighted in the April 15 issue of County Connections in an article written by Mr. McCormack.

Ms. Williams called attention to the registration materials provided for the VML Annual Conference, which will take place October 18 – 20, 2009 in Roanoke.

Ms. Williams announced that, pursuant to Governor Kaine's recent Executive Order 82, state agencies are prohibited from purchasing water in individual serving-sized containers made of plastic except for use in emergencies or for safety and health reasons. Consequently, such will no longer be provided at Commission meetings.

6. Meeting Per Diem

Ms. Williams reminded the members that, effective July 1, they will no longer receive per diem payments for their service to the Commonwealth.

II. Assessment of State and Federal Mandates on Local Government

Mr. Bolster said that the state agencies' mandate assessments for FY 2008-09 had been completed. There were 27 mandates on the original schedule, but one was later eliminated from the mandates catalog after a determination by the staff and the agency that the cataloged mandate did not actually impose any obligations on local governments. On all 26 mandate assessments received, the recommendation was "retain." For one mandate, SHHR.VDH028 (Maintenance of Emergency Medical Services), the agency recommended that the statutory language be strengthened to require localities to "ensure that emergency medical services are provided throughout the locality" rather than "seek to ensure." Mr. Bolster commented that it will be up to the agency or its secretariat to pursue this change.

Mr. Bolster noted that there are ten mandates scheduled for assessment in FY 2009-10. The first assessment period began on July 1, with several more beginning in August. Most of the assessments should be done by the end of the calendar year.

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Mr. Bannister asked whether all agencies had been timely in submitting their assessments during the last fiscal year, and whether any action from the Commission was required to encourage compliance with the assessment schedule. Mr. Bolster responded that a few of the agencies had been late, but that this did not typically cause any problems. The staff submits completed assessments to the Governor on a semi-annual basis, so there is some leeway time to collect late assessments. Mr. Bannister requested that Commission staff track the timeliness of submissions.

III. 2009 Survey of Cash Proffers

Mr. Bolster informed the members that staff will mail out the cash proffer survey instruments later in the week. There are 153 localities targeted, as has been the case for the last three years. The due date for the surveys is September 30. Mr. Bolster reported that staff added a question to the survey asking whether the locality has a cash proffer ordinance or policy and requesting a copy of the document or a website link to the document if the locality has such an ordinance or policy. Mr. Bolster explained that staff felt that this information may be needed for research purposes in light of the recent direction taken by the Joint Subcommittee to Study Development and Land Use Tools in Virginia's Localities. One of the draft pieces of legislation discussed at the Subcommittee's June 18 meeting concerned replacing the cash proffer system with an impact fee system, with the Commission given the responsibility to draft a model impact fee ordinance that all localities wishing to use impact fees would have to follow.

IV. Fiscal Stress Report for 2007/2008

Mr. Ziony indicated that the Commission's staff is currently mobilizing data to support the fiscal stress computations for 2007/2008. He stated that, in its final form, the master file will encompass 31 demographic, economic, and fiscal indicators drawn from the U.S. Census Bureau, the Weldon Cooper Center for Public Service, the office of the State Auditor, the Department of Taxation, and the Department of Motor Vehicles. Mr. Ziony explained that, at present, the Commission's dataset includes 27 variables covering the population, property values and levies, motor vehicle license tax rates, and own-source revenues of Virginia's localities. He further noted that 19 of these data elements apply to the 134 counties and cities statewide. The eight remaining variables are linked either to the 95 counties or to the 190 towns of the Commonwealth. Mr. Ziony predicted that the balance of the required statistical measures, denoting vehicular registration levels and magnitudes of adjusted gross income for counties and cities, will be in hand by mid-December of this year.

V. Joint Subcommittee Studying Development and Land Use Tools

Ms. Williams explained that two pieces of draft legislation were discussed at the June 18 meetings of the Joint Subcommittee and its Workgroups. The first, referred to as LD 1483, focuses on urban development areas (UDAs), and the second, referred to as LD 1484, deals with impact fees and establishes a new role for the Commission on Local Government.

Ms. Williams noted that an additional draft bill was posted on the Joint Subcommittee's website on July 9, when it was also announced that Workgroups 1, 2 and

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3 will meet on July 30 in Richmond. As previously announced, the Joint Subcommittee is scheduled to meet on August 19 in Richmond.

Ms. Williams briefly described LD 1483, which proposes changes to the existing UDA statute. The proposal addresses nomenclature; development design; population densities in UDAs; and population projections, and it establishes a new role for the planning district commissions to provide planning assistance and data.

Ms. Williams then described LD 1484, which repeals the authority for localities to accept voluntary cash proffers for new residential growth and limits their ability to accept most off-site, non-cash proffers. Ms. Williams explained that, instead, localities would be able to adopt a model impact fee program for new and by-right residential development for roads, school facilities and public safety facilities only. She also reported that the proposal would require the Commission to develop a model impact fee ordinance. She further stated that the proposed bill does not provide for a cap on impact fees but requires that the model ordinance contain a process for calculating the maximum fee that may be assessed.

Ms. Williams further explained that, under the proposal, an impact fee may only be imposed if the locality has established a UDA and that the fee charged within that area is restricted to only two-thirds of the amount imposed outside the UDA. Ms. Williams said that the proposed bill also requires that the model ordinance contain a provision that conditions the locality's imposition of impact fees on the locality requesting and receiving a finding from the Commission that the UDA provisions in the locality's comprehensive plan are in compliance with the UDA statutes.

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Ms. Williams next provided the following overview – in chronological order and in context – of the new duties required of the Commission under LD 1484:

- The Commission develops/designates a table or method for attributing service units to various types of development and land use, including residential, commercial and industrial uses (lines 407 – 410).
 - Prior to adopting a system of impact fees, the locality is required to conduct an assessment of public facility improvement needs benefiting an impact fee service area and to adopt a public facility improvements plan for the area (lines 373 – 396).
 - The locality must include the total number of new service units projected for the impact fee service area in assessing public facility improvement needs and preparing a public facility improvements plan (lines 397 – 403).
 - After adoption of a public facility improvements plan, the locality may adopt the model ordinance (lines 411 – 415).
- The Commission is required to make available a model ordinance, which localities must use in assessing and imposing impact fees. Before making the model ordinance available, the Commission is required to conduct at least five public hearings across the Commonwealth (lines 355 – 364).
- The model ordinance must contain a provision that conditions the locality's imposition of impact fees on the locality requesting and receiving from the Commission a finding that the locality (a) has amended its comprehensive plan pursuant to § 15.2-2223.1, or (b) in the case of a locality that has adopted a resolution

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pursuant to subsection E of § 15.2-2223.1, has a comprehensive plan that accommodates growth in a manner consistent with § 15.2-2223.1 (lines 426 – 431).

Ms. Williams reported that, at the June 18 meeting of the Joint Subcommittee, Chairman Athey asked DHCD to provide comments on the sections of the proposal that affect the work of the Commission in time for the next Joint Subcommittee meeting, which is scheduled to take place on August 19. Ms. Williams explained that she has been working with agency officials to develop these comments.

After a lengthy discussion concerning the new duties proposed for the Commission and focusing in part on the complete lack of resources available to the Commission in order to accomplish these duties, the Commission recessed briefly for lunch during which time the members requested that Ms. Williams draft key points – based on their discussion as well as her prior discussions with agency officials – that will likely be addressed in the response to the Joint Subcommittee.

Subsequently, Ms. Williams verbalized the following key points for consideration by the Commission. Ms. Williams indicated that DHCD is concerned that the proposal would detract from the agency's mission and has the potential to impair the agency's relationships with one or more key groups; it may not be possible for the Commission to craft a method for attributing service units and/or a formula for calculating maximum impact fees that would be workable in all localities; the Commission does not have adequate resources available to accommodate the increase in workload or the number of public hearings and additional Commission meetings that would be result from the proposal; it would require expertise beyond that which the current staff and members

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possess; and, if the composition of the Commission were modified to accomplish these new duties, it would impair the Commission's ability to deal with the Commission's current statutory responsibilities, specifically those pertaining to boundary change, governmental transition and other interlocal issues.

After a brief discussion, Mr. Bannister made a motion that the Commission support the points presented by Ms. Williams, such motion was seconded by Mr. Hodge and unanimously approved by the Commission. The members requested that Ms. Williams circulate among them the agency comments that will be provided to the Joint Subcommittee.

VI. Scheduling of Regular Meetings

The Commission confirmed that its next regular meeting will take place on Monday, September 14, 2009. Ms. Williams will determine whether space is available at the VHDA Housing Center in Glen Allen (Innsbrook) for the meeting.

VII. Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 1:16 p.m. on a motion by Mr. Bannister, which was seconded by Mrs. Parsons.

Vola T. Lawson
Chairman

Susan B. Williams

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